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THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

ORIGINAL COPY

No. 80-5451

JOHN M. REED, Claimant,

Appellant

vs.

DEL CHEMICAL CORPORATION,

Appellee.

On Appeal From the Court of Appeals
And the Supreme Court of the State of Oregon

MOTION PURSUANT TO RULES 16(b) AND 16(d) TO
DISMISS APPEAL

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Authorities Cited

Statutes:

28 USC §1257(1) pg. 1, 2
28 USC §1257(2) pg. 1, 2
Or. Rev. Stat. 19.180(1) pg. 2
Or. Rev. Stat. 656.245(1) pg. 2

Supreme Court Rules:

Rule 16.1(b) pg. 1
Rule 16.1(d) pg. 1

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Appellee.

MOTION TO DISMISS

Appellant attempts to appeal the decision of the Court of Appeals of the State of Oregon in this Workers Compensation matter. The case is found at 44 Or App 79, ____ P2d _____ (1980) (Petition for Review denied by Supreme Court of the State of Oregon, May 20, 1980).

Appellee, Del Chemical Corporation, pursuant to Rule 16.1(b), (d), Rules of the Supreme Court of the United States, moves to dismiss the Appeal on the following grounds:

1. The decision of the Oregon Appellate Courts had nothing to do with the validity of a treaty or statute of the United States and no decision was made pertaining to the validity of any such treaty or statute. 28 USC §1257(1).

2. The decision of the Oregon Appellate Courts had nothing to do with the validity of a state statute attacked on the ground that it is repugnant to the constitution, treaties or laws of the United States and there was no decision made on the validity of any such statute. 28 USC §1257(2).

3. No substantial federal question is presented.

4. The judgment otherwise rests on an adequate non-federal basis.

ARGUMENT

We attach hereto in our appendix the decision of the referee of the Hearings Division of the Workers' Compensation Board, the decision of the Workers' Compensation Board on review, the Memorandum Opinion of the Court of Appeals of the State of Oregon and the notification that Appellant's Petition for Review was denied, sent to Appellant on May 21, 1980 by the Oregon Supreme Court calendar clerk. We also attach in our appendix the briefs filed in the Court of Appeals, consisting of Petitioner's Brief and Abstract of Record and Respondent's Brief and this Appellant's Appellant's Petition for Review and Appellee's Response to Petition for Review filed in the Supreme Court of the State of Oregon.

As can be seen from the Memorandum Opinion of the Court of Appeals of the State of Oregon (App. C pg 6) the Opinion and Order on review of the Oregon Workers' Compensation Board was affirmed by the Court of Appeals of the State of Oregon without opinion on January 21, 1980. The briefs filed by the parties reveal that no federal question, contemplated by 28 USC §1257(1)(2), was ever adequately brought before the Oregon Courts and was ever ruled on by the Oregon Courts.

The decisions of the Hearings Division of the Workers' Compensation Board and the Workers' Compensation Board itself show that the prime issue in the case was whether or not the claimant sustained an aggravation within the meaning of the Oregon Workers' Compensation law. The issues as delineated by the referee of the Hearings Division of the Workers' Compensation Board were as follows:

1. Compensability of claimant's aggravation claim.

2. Irrespective of compensability, claimant's entitlement to medical benefits under ORS 656.245(1).

3. If the claim is compensable, or the claimant is otherwise entitled to medical benefits, his entitlement to payment, or

reimbursement, for travel and lodging expenses, as well as other expenses, incurred in connection with his travel to the State of California to seek medical advice.

4. Claimant's entitlement to penalties because of employer and carrier's alleged unreasonable denial of the claim or failure to properly process the claim.

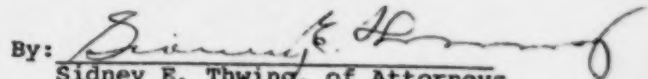
5. If proper, the extent of claimant's permanent disability. (App. A pg. 4(1, 2).

The documents contained in the appendix show that there is no substantial federal question involved here; that any alleged federal question sought to be raised by Appellant was not timely or properly raised, and clearly was not expressly passed on by the Oregon Courts. Furthermore, as the opinions of the referee, the Workers' Compensation Board and the rulings of the Court of Appeals of the State of Oregon show, the final judgment in this case rests substantially on an adequate non-federal basis in that the case was decided by the Workers' Compensation Board, and affirmed by the Court of Appeals of the State of Oregon without opinion, on the factual determination that claimant suffered a new intervening, independent injury which represented an off the job injury which is not compensable. The Workers' Compensation Board thereby approved the denial of the claim by the employer and its insurer. Pursuant to ORS 19.180, the Court of Appeals of the State of Oregon affirmed without opinion.

On the foregoing grounds, Appellant's appeal should be dismissed.

Respectfully submitted,

THWING, ATHERLY & BUTLER

By: 
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